

HOUSE BILL No. 1645

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-5-15-6; IC 24-5.5; IC 24-9; IC 25-1-11; IC 25-34.1-6-2.5.

Synopsis: Mortgage fraud and regulated professions. Amends the law concerning the disclosures that a credit service organization must provide to a buyer to reflect changes in the federal Fair Credit Reporting Act concerning the circumstances under which a consumer is entitled to a consumer report without charge from a consumer reporting agency. Amends the statute concerning mortgage rescue protection fraud to provide that certain: (1) financial institutions; (2) government sponsored enterprises; (3) government agencies; and (4) other persons; are subject to the requirement that a mortgagee provide certain notice to a mortgagor at the time of filing a complaint in a foreclosure action. Requires a foreclosure consultant to retain all records related to services performed on behalf of a homeowner for at least three years after the termination or conclusion of the foreclosure consultant contract. Prohibits a person from engaging in, or soliciting to engage in, a real estate or mortgage transaction without a permit or license required by law. Prohibits a person from making certain representations with respect to: (1) a mortgage or real estate transaction; or (2) the property that is the subject of the transaction; if the representation is not true and the person knows or reasonably should know that the representation is not true. Provides that the board that regulates a licensed profession may not approve the surrender of a practitioner's license if the attorney general's office: (1) has filed an administrative complaint concerning the practitioner's license; and (2) opposes the surrender. Provides that a practitioner who has been subjected to disciplinary sanctions may be required to pay the costs of any real estate review appraisal obtained in connection with the
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Effective: July 1, 2009.

Burton

January 16, 2009, read first time and referred to Committee on Financial Institutions.



disciplinary proceedings. Provides that a violation of the statutes concerning: (1) credit service organizations; and (2) mortgage rescue protection fraud; by a person licensed or required to be licensed as a real estate salesperson or broker is a violation of the statute governing the regulation of real estate salespersons and brokers and is subject to certain specified enforcement procedures and sanctions.

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Introduced

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

HOUSE BILL No. 1645

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 24-5-15-6 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. Before executing a
3 contract or agreement with a buyer or receiving money or other
4 valuable consideration, a credit services organization must provide the
5 buyer with a written statement that contains the following:
6 (1) A complete and detailed description of the services to be
7 performed by the credit services organization for the buyer and
8 the total cost of the services.
9 (2) A statement explaining the buyer's right to proceed against the
10 bond or surety account required under section 8 of this chapter.
11 (3) The name and address of the:
12 (A) surety company that issued a bond; or
13 (B) depository and the trustee of a surety account and the
14 account number of the surety account;
15 required under section 8 of this chapter.



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(4) A complete and accurate statement of the buyer's right to review any file on the buyer maintained by a consumer reporting agency as provided under the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.).

(5) A statement that the buyer's file is available for review:

(A) at no charge ~~on request made to the consumer reporting agency within thirty (30) days after the date of receipt of a notice that credit has been denied;~~ **at the times and under the circumstances set forth in 15 U.S.C. 1681j;** and

(B) for a minimal charge at any other time **as provided by 15 U.S.C. 1681j(f).**

(6) A complete and accurate statement of the buyer's right to dispute the completeness or accuracy of an item contained in a file on the buyer maintained by a consumer reporting agency.

(7) A statement that accurate information cannot be permanently removed from the files of a consumer reporting agency.

(8) A complete and accurate statement indicating when consumer information becomes obsolete and when consumer reporting agencies are prevented from issuing reports containing obsolete information.

(9) A complete and accurate statement of the availability of nonprofit credit counseling services.

SECTION 2. IC 24-5.5-1-1, AS ADDED BY P.L.209-2007, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. **Except for IC 24-5.5-3-1**, this article does not apply to the following:

(1) A person organized or chartered under the laws of this state, any other state, or the United States that relate to a bank, a trust company, a savings association, a savings bank, a credit union, or an industrial loan and investment company.

(2) The Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or a Federal Home Loan Bank.

(3) A department or agency of the United States or of Indiana.

(4) A person that is servicing or enforcing a loan that it owns.

(5) A person that is servicing a loan:

(A) for a person described in subdivisions (1) through (4); ~~of this section;~~ or

(B) insured by the Department of Housing and Urban Development or guaranteed by the Veterans Administration.

(6) An attorney licensed to practice law in Indiana who is representing a mortgagor.

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SECTION 3. IC 24-5.5-5-7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 7. A foreclosure consultant shall retain all records and documents, including the foreclosure consultant contract, related to services performed on behalf of a homeowner for at least three (3) years after the termination or conclusion of the foreclosure consultant contract entered into by the foreclosure consultant and the homeowner.**

SECTION 4. IC 24-9-1-1, AS AMENDED BY P.L.181-2006, SECTION 58, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. Except for ~~IC 24-9-3-7(3)~~ **IC 24-9-3-7(c)(3) and IC 24-9-3-7(c)(4)**, this article does not apply to:

(1) a loan made or acquired by a person organized or chartered under the laws of this state, any other state, or the United States relating to banks, trust companies, savings associations, savings banks, credit unions, or industrial loan and investment companies; or

(2) a loan:

(A) that can be purchased by the Federal National Mortgage Association, the Federal Home Loan Mortgage Association, or the Federal Home Loan Bank;

(B) to be insured by the United States Department of Housing and Urban Development;

(C) to be guaranteed by the United States Department of Veterans Affairs;

(D) to be made or guaranteed by the United States Department of Agriculture Rural Housing Service;

(E) to be funded by the Indiana housing and community development authority; or

(F) with a principal amount that exceeds the conforming loan size limit for a single family dwelling as established by the Federal National Mortgage Association.

SECTION 5. IC 24-9-3-7, AS AMENDED BY P.L.141-2005, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. **(a) As used in this section, "mortgage transaction" includes:**

(1) a home loan subject to this article;

(2) a loan described in IC 24-9-1-1;

(3) a first lien mortgage transaction (as defined in IC 24-4.4-1-301) subject to IC 24-4.4;

(4) a consumer credit sale subject to IC 24-4.5-2 in which a mortgage, deed of trust, or a land contract that constitutes a

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lien is created or retained against land upon which there is a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes; and

(5) a consumer credit loan subject to IC 24-4.5-3 in which a mortgage, deed of trust, or a land contract that constitutes a lien is created or retained against land upon which there is a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes.

(b) As used in this section, "real estate transaction" has the meaning set forth in IC 25-34.1-10-8.

(c) A person may not:

(1) divide a loan transaction into separate parts with the intent of evading a provision of this article;

(2) structure a home loan transaction as an open-end loan with the intent of evading the provisions of this article if the loan would be a high cost home loan if the home loan had been structured as a closed-end loan; or

(3) engage in, a deceptive act in connection with a: (A) home loan; or (B) loan described in IC 24-9-1-1, or solicit to engage in, a real estate transaction or a mortgage transaction without a permit or license required by law; or

(4) with respect to a real estate transaction or a mortgage transaction, represent that:

(A) the transaction has the sponsorship or approval of a particular person or entity that it does not have and that the person knows or reasonably should know it does not have; or

(B) the real estate or property that is the subject of the transaction has any improvements, appurtenances, uses, characteristics, or associated benefits that it does not have and that the person knows or reasonably should know it does not have.

SECTION 6. IC 24-9-3-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. A person seeking to enforce section ~~7(3)~~ 7(c)(3) or 7(c)(4) of this chapter, may not knowingly or intentionally intimidate, coerce, or harass another person.

SECTION 7. IC 25-1-11-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 17. (a) **Except as provided in subsection (b)**, a practitioner may petition the board to accept the surrender of the practitioner's license instead of having a hearing before the board. The practitioner may not surrender the practitioner's license without the written approval of the board, and the

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board may impose any conditions appropriate to the surrender or reinstatement of a surrendered license.

(b) The board may not approve the surrender of a practitioner's license under subsection (a) if the office of the attorney general:

(1) has filed an administrative complaint concerning the practitioner's license; and

(2) opposes the surrender of the practitioner's license.

SECTION 8. IC 25-1-11-18, AS AMENDED BY P.L.194-2005, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 18. A practitioner who has been subjected to disciplinary sanctions may be required by a board to pay the costs of the proceeding. The practitioner's ability to pay shall be considered when costs are assessed. If the practitioner fails to pay the costs, a suspension may not be imposed solely upon the practitioner's inability to pay the amount assessed. These costs are limited to costs for the following:

- (1) Court reporters.
- (2) Transcripts.
- (3) Certification of documents.
- (4) Photo duplication.
- (5) Witness attendance and mileage fees.
- (6) Postage.
- (7) Expert witnesses.
- (8) Depositions.
- (9) Notarizations.
- (10) Administrative law judges.

(11) Real estate review appraisals, in appropriate cases.

SECTION 9. IC 25-34.1-6-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2.5. (a) A violation of:

- (1) IC 24-5-15; or
- (2) IC 24-5.5;

by a person licensed or required to be licensed under this article is a violation of this article.

(b) A person who commits a violation described in subsection (a) commits a Class A infraction and is subject to:

- (1) the enforcement procedures described in section 2 of this chapter; and
- (2) any sanction that may be imposed by the commission under IC 25-1-11-12 for an act described in IC 25-1-11-11.

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